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2007 DEC -7 A 11:49

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Attorneys for the Town of Carefree

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC -7 2007

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED BY

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IN THE MATTER OF THE
APPLICATION OF BLACK
MOUNTAIN SEWER
CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT
AND PROPERTY AND FOR
INCREASES IN ITS RATES AND
CHARGES FOR UTILITY SERVICES
BASED THEREON.

No. SW-02361A-05-0657

JOINT STIPULATION REGARDING
HOOK-UP FEE REFUND AND
CAREFREE ESTATES

On or about October 1, 2007, the Town filed with the Arizona Corporation Commission (the "Commission") a Combined Motion for Clarification and Application for Amendment of Order Pursuant to A.R.S. § 40-252 (the "Motion") regarding the issue of whether thirty-three individuals owning real property within the Carefree Inn Estates subdivision ("Carefree Inn Estates") were entitled to receive a refund of hook-up fees from Black Mountain in connection with Decision No. 69164 (Opinion and Order in Docket No. SW-02361A-05-0657) (the "Decision"). The Decision concluded in part as follows:

The record supports a finding that customers should be refunded \$833,367 for hook-up fees that were used to purchase land and that have not been expended. The refunds should be distributed in the manner proposed by the

1 Company, on a per customer basis irrespective of customer
2 class. The rates granted in this Decision should not go into
3 effect until the refunds have been distributed.

4 Decision No. 69164 at 42. The Decision ordered Black Mountain as follows:

5 IT IS FURTHER ORDERED that the revised
6 schedules of rates and charges shall be effective for all
7 service rendered on and after December 1, 2006, subject to
8 the requirement that Black Mountain Sewer Corporation has
9 mailed to each customer prior to that date a refund check for
10 the hook-up fee funds, consistent with and in the manner
11 described hereinabove. The new rates may not go into effect
12 until the Company has provided, to the satisfaction of the
Director of the Utilities Division, sufficient information to
show that the refunds have been issued in accordance with the
discussion set forth herein.

13 Decision No. 69164 at 40. Black Mountain made refunds of \$412.15 to 2,022
14 customers.

15 The Motion requested the Commission to clarify or amend the Decision to
16 provide that thirty-three additional refunds were appropriate for parcels of real property
17 located within the Carefree Inn Estates subdivision, owners of which had not
18 individually received a refund of \$412.15, but have and continue to receive sewer
19 service from Black Mountain. Instead, the Carefree Inn Estates Homeowners'
20 Association received one check in the sum of \$412.15 on behalf of the thirty-three
21 individual parcels of real property located with the Carefree Inn Estates because Black
22 Mountains bills only the Homeowners Association and view only the Homeowners
23 Association as a customer.

24 Without admitting or conceding any position on the relief requested by the
25 Town, the Town, Black Mountain and the Residential Utility Consumer Office
26
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1 ("RUCO") have agreed that an appropriate and revenue neutral means of resolving the
2 issue would be for Black Mountain to (1) refund \$405.73 with respect to each of the
3 thirty-three parcels of real property within Carefree Inn Estates; (2) debit its other
4 customers' accounts for \$6.62. The debit to the other customers' accounts allows Black
5 Mountain to make the thirty-three additional refunds without paying more than
6 originally ordered by the Commission (i.e. \$833,367.00 to 2,055 individuals instead of
7 2,022 individuals). The parties hereto further stipulate that no finding that the
8 individual homeowners within Carefree Inn Estates are "customers" of Black Mountain
9 is being requested of or should be made by the Commission except for the limited
10 purposes of distribution of refunds as stipulated herein.

11 The order attached hereto as Exhibit A reflects the stipulated position of the
12 Town, Black Mountain and RUCO. Commission Staff has taken no position on this
13 issue.

14 RESPECTFULLY SUBMITTED: December 5, 2007.

15 MOHR, HACKETT, PEDERSON, BLAKLEY
16 & RANDOLPH, P.C.

17 By 
18

19 Thomas K. Chenal

20 David W. Garbarino

21 Suite 155

22 7047 East Greenway Parkway

23 Scottsdale, Arizona 85254

24 Attorneys for the Town of Carefree

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26 ///

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FENNEMORE CRAIG, P.C.

By

Jay Shapiro
Patrick J. Black
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Phoenix, AZ 85012
jshapiro@fclaw.com
Attorneys for Black Mountain Sewer
Company

RESIDENTIAL UTILITY CONSUMER OFFICE

By

Daniel W. Pozefsky
1110 West Washington Street
Suite 220
Phoenix, AZ 85007
Attorney for Residential Utility Consumer
Office

ORIGINAL and 13 COPIES
of the foregoing filed December 7,
2007 with:

Arizona Corporation Commission
Docket Control
1200 Washington Street
Phoenix, AZ 85007

COPIES of the foregoing hand-delivered
December 7, 2007 to:

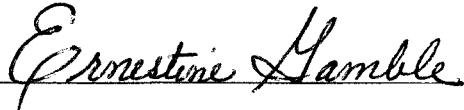
The Honorable Dwight D. Nodes
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 Washington Street
Phoenix, AZ 85007

Keith Layton
Staff Counsel
Legal Division
Arizona Corporation Commission
1200 Washington Street
Phoenix, AZ 85007

1 Brian Bozzo
2 Utilities Division
3 Arizona Corporation Commission
4 1200 W. Washington St.
5 Phoenix, AZ 85007

6 COPIES of the foregoing mailed
7 December 7, 2007 to:

8 Boulders Homeowners Association
9 Marilyn H. Courier, Secretary
10 P.O. Box 2956
11 Carefree, AZ 85377
12 M.M. Shirtzinger
13 34773 N. Indian Camp Trail
14 Scottsdale, AZ 85262

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EXHIBIT A

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BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
JEFF HATCH-MILLER
Commissioner
WILLIAM A. MUNDELL
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

IN THE MATTER OF THE
APPLICATION OF BLACK
MOUNTAIN SEWER
CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT
AND PROPERTY AND FOR
INCREASES IN ITS RATES AND
CHARGES FOR UTILITY SERVICES
BASED THEREON.

No. SW-02361A-05-0657

**JOINT STIPULATION REGARDING
HOOK-UP FEE REFUND AND
CAREFREE ESTATES**

BY THE COMMISSION:

On September 16, 2005, Black Mountain Sewer Corporation ("Black Mountain")
filed an application with the Arizona Corporation Commission (the "Commission") for
a rate increase.

In Decision No. 69164 (December 5, 2006) (the "Decision") arising from the rate
proceeding, the Commission concluded as follows:

The record supports a finding that customers should be
refunded \$833,367 for hook-up fees that were used to
purchase land and that have not been expended. The refunds
should be distributed in the manner proposed by the
Company, on a per customer basis irrespective of customer
class. The rates granted in this Decision should not go into
effect until the refunds have been distributed.

1 Decision No. 69164 at 40. The Decision ordered Black Mountain as follows:

2
3 IT IS FURTHER ORDERED that the revised
4 schedules of rates and charges shall be effective for all
5 service rendered on and after December 1, 2006, subject to
6 the requirement that Black Mountain Sewer Corporation has
7 mailed to each customer prior to that date a refund check for
8 the hook-up fee funds, consistent with and in the manner
9 described hereinabove. The new rates may not go into effect
until the Company has provided, to the satisfaction of the
Director of the Utilities Division, sufficient information to
show that the refunds have been issued in accordance with the
discussion set forth herein.

10 *Decision No. 69164 at 42.* Black Mountain made refunds of \$412.15 to 2,022
11 customers, including a single check in the sum of \$412.15 to the Carefree Inn Estates
12 Homeowners' Association, but no refunds to the thirty-three individual real property
13 owners within Carefree Inn Estates.

14
15 The Town of Carefree (the "Town"), an intervening party, filed a Combined
16 Motion for Clarification and Application for Amendment of Order Pursuant to A.R.S. §
17 40-252 (the "Motion"), that requested the Commission to clarify or amend the Decision
18 to address the issue of refunds for the thirty-three parcels of real property within the
19 Carefree Inn Estates subdivision that receive sewer services from Black Mountain, but
20 owners of which did not receive a refund.

21
22 To resolve the issue raised by the Motion, the Town, Black Mountain, the
23 Residential Utility Consumer Office, stipulated as follows:

24
25 1. Black Mountain will refund \$405.73 for each of the thirty-three parcels of
26 real property located within Carefree Inn Estates; and
27
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2. Black Mountain will debit Black Mountains' other customers' accounts \$6.62.

Commission Staff has taken no position on this matter.

IT IS THEREFORE ORDERED that Black Mountain Sewer Corporation shall refund \$405.73 for each of the thirty-three parcels of real property located within Carefree Inn Estates.

IT IS FURTHER ORDERED that Black Mountain Sewer Corporation shall debit each of its customer's accounts \$6.62.

IT IS FURTHER ORDERED that in all other respects, Decision No. 69164 shall remain in full force and effect.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order.

Dated this _____ day of _____, 2007.

DWIGHT D. NODES
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

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COPIES of the foregoing
mailed this ____ day of
_____ to:

Thomas K. Chenal David W. Garbarino Suite 155 7047 East Greenway Parkway Scottsdale, Arizona 85254 Attorneys for the Town of Carefree	Jay Shapiro Patrick J. Black 3003 North Central Avenue, Suite 2600 Phoenix, AZ 85012 Attorneys for Black Mountain Sewer Company
Daniel W. Pozefsky 1110 West Washington Street Suite 220 Phoenix, AZ 85007 Attorney for Residential Utility Consumer Office	Brian Bozzo Utilities Division Arizona Corporation Commission 1200 W. Washington St. Phoenix, AZ 85007
Keith Layton Staff Counsel Legal Division Arizona Corporation Commission 1200 Washington Street Phoenix, AZ 85007	Boulders Homeowners Association Marilyn H. Courier, Secretary P.O. Box 2956 Carefree, AZ 85377
M.M. Shirtzinger 34773 N. Indian Camp Trail Scottsdale, AZ 85262	